No. 03-1617

Supreme Court, U.S.
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In The Supreme Court of the United States

JOHN DOE,

Petitioner,

v.

DAVID THOMPSON, ALLEN AULT, A.G. THOMAS, MICHAEL GROVES, and HUGH LONG,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OBJECTIONS TO PETITION

1. Petitioner's "questions presented for review" do not properly reflect the facts in evidence in this action.
2. Petitioner's "reasons for granting the petition" do not properly reflect the facts in evidence in this action.

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Jurisdiction Statement

The underlying District Court jurisdiction arising under 28 U.S.C. Section 1331 is based on Federal Law, 42 U.S.C. §1983. There was an appeal from the final order of the District Court to the Eleventh Circuit Court of Appeals pursuant to 28 U.S.C. §§1291 and 1294. The judgment of the United States Court of Appeals for the Eleventh Circuit Court of Appeals was rendered on May 20, 2004. The statutory provision conferring jurisdiction on the Supreme Court of the United States to review on a Writ of Certiorari is 28 U.S.C. §1254.

Statement of the Case

John Doe, Petitioner, came from the Federal Witness protection program to Georgia during the early 80's. While in Gwinett County and in the witness protection program he was convicted of child molestation and sentenced to prison. After his conviction he escaped. When captured he was sentenced to the maximum on both charges, to run consecutively. His incarceration in the Georgia prison system began October 17, 1986.

Since his conviction Petitioner has maintained the position that he was a very important witness for the Federal Government. He says he turned on several members of the Nuestro Familia, Mexican Mafia and the Aryan Brotherhood gangs, of which he was a member during the 70's. He further says his testimony resulted in solving at least 15 murders, he testified in eight murder trials with one resulting in the death penalty. Petitioner takes the position that a contract for his life has been put out by these gangs and he cannot live in general population for fear of being attacked, assaulted or killed because of him being labeled a "snitch" or "rat". Petitioner further maintains that the inmates within the Georgia prison system know who he is because the DA who prosecuted him for child molestation told the public who he was when he escaped.

Petitioner alleges he has been in "solitary Confinement" for seventeen years. He has not been in solitary confinement he has been in protective custody at his own request. Petitioner was in what is called "PCPC" at Georgia State Prison. This is the highest level of protective custody the Georgia Department of Corrections offers. In PCPC status Petitioner was in a single man cell, he exercised alone, showered alone and was escorted anywhere he went alone with one correctional officer for security. The difference in PCPC and other segregation, which is referred to as administrative segregation, is that administrative segregation is punitive in nature. Anything other than general population is considered special management but protective custody is different than administrative segregation.

Inmates in protective custody are housed in a different building than other inmates. In protective custody the inmate retains the same privileges as other inmates in general population, other than the freedom of movement within the dorm. Protective custody inmates retain the right to store, telephone, visitation etc. Petitioner is also allowed to continue any religious or educational opportunities through in cell one on one teaching by prison staff. Georgia has protected Petitioner from harm by keeping Petitioner in protective custody, as Petitioner requested, and Petitioner has never been harmed.

Georgia has communicated with other governments regarding a placement for Petitioner. However the problem is that if Petitioner is transferred The State of Georgia will have to continue to pay the costs and remain responsible for Petitioner. It is unreasonable to expect the State of Georgia to transfer this inmate to another state, and yet still maintain responsibility and liability for the inmate's safety. It is more reasonable to keep the inmate in Georgia custody where Georgia can insure his safety. According to an excerpt from a letter from the FBI admitted into evidence at trial, because of his crime after relocation, Petitioner will not be taken into federal custody as long as the State of Georgia can keep him safe, either in its own system or through transfer to another state.

Petitioner has never produced one iota of facts that any Defendant has told other inmates who Petitioner is. Petitioner has never produced any set of facts to suggest the Defendants have been deliberately indifferent to his safety. In fact, the truth is, the Defendants have never revealed to other inmates who Petitioner is and have kept him in protective custody because that is the best place for his own safety. It is in the record that Petitioner admits the person who revealed his identity is the prosecutor in Gwinett county. Petitioner even states he found out it was the DA who prosecuted him that put the information out as to who he was. Petitioner stated in his testimony on May 16, 2001 at the Waycross hearing before Judge Graham that "all of this situation has been created by going back to

district attorney and people as word spreads in the prison system. And no matter where you go, it will be the same way." Petitioner blames the DA for the troubles he has as a result of people knowing who he is. At trial he stated "I'm saying that because the prosecutor and the situation...." basically blaming the prosecutor for the situation he has had to deal with while incarcerated.

Petitioner argues his duration of solitary confinement has caused him "extreme psychological" harm. However, Petitioner has continuously prosecuted this case, and effectively presented this case to a jury. He appears to be in very good physical health and there are no notes of any type of mental or physical injures in his medical file. If there were, Petitioner would have pointed those out to the trial court as well as this court. Petitioner simply has been in protective custody at his own request and has suffered no harm as a result thereof.

In Petitioner's statement of the case he relates, at the oral argument the panel of the United States Court of Appeals for the Eleventh Circuit ordered mediation which after seventeen years finally resulted in the Georgia Department of Corrections agreeing to Petitioner's transfer from solitary confinement at the Georgia State Prison to another prison where he could be safe in the general population. However, Petitioner did not bother to inform this Court the reason the Georgia Department of Corrections agreed to transfer Petitioner was because he finally agreed to sign a release and waiver verifying that his life would not be in danger at the new prospective prison and that he (Doe) accepted responsibility for his safety. Said release and waiver is all that had been standing in Petitioner's way of a transfer for several years (in light of the fact on two previous transfers Petitioner had complained about the transfer and sued Department of Corrections personnel for ignoring what he said was a danger to him).

Argument and Citation of Authority

A. Petitioner's "questions presented for review" do not properly reflect the facts in evidence in this action.

1.

Does incarcerating Petitioner in solitary confinement for seventeen years for his protection against imminent death from other inmates in the general prison population constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments when he could have been transferred to another prison where he would have been safe in the general prison population?

There are several ways in which this question presented for review does not properly reflect the facts in evidence in this action. The first of which is the characterization of "solitary confinement." Petitioner was in Protective Custody, not any type of punitive confinement. The conditions of confinement were evaluated in earlier proceedings and found not to be in violation of the Eighth Amendment in and of themselves. The second improper characterization is the statement "imminent death from other inmates." The record reflects the alleged threat is one "reported" by the petitioner himself. There is absolutely no evidence of actual danger other than the claims of petitioner that there is a contract on his life. The steps taken by Defendants to protect Petitioner have been in cooperation with Petitioner's requests. Another improper characterization is the statement "when he could have been transferred to another prison where he would have been safe in the general prison population." One thing Petitioner does not want to mention at this phase of the action is the fact that on two previous occasions (during the alleged 17 years of solitary confinement), Petitioner was transferred to other prisons within the Georgia Prison system, Valdosta State Prison and Autry State Prison. These were routine population redistribution transfers. On both occasions, immediately upon arriving at these prisons the Petitioner requested to be locked down in protective custody

claiming his life would be in danger in general population at these prisons. And related to both transfers, Petitioner claimed Defendants retaliated against him by transferring him, and were deliberately indifferent to his safety by transferring him to these prisons. In earlier legal proceedings Petitioner has claimed that all Georgia prisons would be a danger to him in general population, stating "no matter where you go, it will be the same way." Yet now, several years later in this litigation, Petitioner wants to claim Defendants would not transfer him to another prison where he would be safe in the general prison population. Petitioner is clearly misrepresenting the facts as they have evolved in this case.

A more properly framed question for review might be, "Does incarcerating Petitioner in protective custody at his own request for seventeen years for his protection against imminent death from other inmates in the general prison population constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments?"

2.

Does qualified immunity protect prison officials against liability for continuing the incarceration of Petitioner in solitary confinement for seventeen years to protect him against death from other inmates in the general prison population when they have been deliberately indifferent to transferring him to another prison where he would have been safe in the general prison population?

This question presents a lot of the same issues discussed in section 1. However, one of the largest misrepresentations is the statement "when they have been deliberately indifferent to transferring him to another prison where he would have been safe in the general prison population." Exactly what does Petitioner mean by being deliberately indifferent to transferring him? Does Petitioner here imply he has some constitutional right to a transfer at his desire? There is absolutely no evidence in the record that would reflect the Defendants were ever deliberately indifferent to Petitioner's safety. As a matter of

fact, they have successfully protected petitioner for seventeen years, even in the face of the threat of "imminent death from other inmates" as Petitioner claims.

A more properly framed question might be, Does qualified immunity protect prison officials against liability for continuing the incarceration of Petitioner in protective custody at his own request for seventeen years to protect him against death from other inmates in the general prison population, or does the constitution create a responsibility for prison officials to seek the solution most desirable to the inmate regardless of the fact his safety is secured in protective custody?

3.

Does incarcerating the Petitioner where he is subject to imminent threat death in the general population or perpetual solitary confinement which after long periods are calculated to disrupt profoundly his senses and personality violate the Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment?

This question for review is totally improper. Petitioner was not incarcerated where he was in danger. Petitioner was incarcerated in Protective Custody which has successfully protected him for seventeen years. Petitioner himself has previously proclaimed the threat was in general population throughout the Georgia Prison system. Therefore, the more proper question might be does Georgia have the authority to enforce the legal sentence of a criminal court within this state? For that is exactly what Petitioner has been trying to set up by this whole process; Georgia's inability to enforce a proper sentence from a criminal Court. The next point of error in this question for review is the statement "which after long periods are calculated to disrupt profoundly his senses and personality." There is no evidence in the record to reflect the incarceration is calculated to disrupt profoundly petitioner's senses and personality. And the final point of fatal error in this question for review is the statement "violate the Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or

Punishment." This claim was not asserted in the original complaint and therefore should not be an issue of consideration on Writ for Certiorari.

B. Petitioner's "reasons for granting the petition" do not properly reflect the facts in evidence in this action.

1.

Petitioner has claimed there is a conflict in the circuits as to whether extended administrative solitary confinement violates the Eighth Amendment and the Fourteenth Amendment. In pursuing said line of argument, Petitioner has quoted Colon v Howard 215F.2nd 227 as a conflicting circuit ruling. However Colon v Howard 215F.2nd 227 must be an improper citation. That citation refers to Louisville & N. R. Co. v. Tucker 215 F.2d 227 (C.A.6 1954) which is totally unrelated to this case. Petitioner also quotes Tellier v. Fields, 280 F.3d 69 (C.A.2 (N.Y.),2000). However, Tellier deals with an involuntary segregation. "It is undisputed that upon Tellier's arrival at MCC, he was placed in a Special Housing Unit ("SHU") because he was considered an escape risk. The exact amount of time Tellier spent in SHU is a matter of minor dispute. Both parties below, as well as the district court, calculated the time at 522 days, but on appeal the time period cited by both parties indicates a confinement of 514 days. Tellier alleges that he was neither initially informed of the reason for his placement in SHU, nor was he subsequently permitted to be heard regarding his continued confinement there." Therefore the issue dealt with in Tellier was the examination of whether 504 days in (punitive) solitary confinement was past the limit of extra confinement which would invoke the protections of due process? It did not find, as Petitioner would attempt to imply, that de facto incarceration in solitary confinement past 504 days, in and of itself regardless of the reason, is a violation of Eighth Amendment. Petitioner also quotes Sheley v. Dugger, 833 F.2d 1420 (C.A.11 (Fla.),1987). However, Sheley also deals with a punitive

segregation. Petitioner quotes from the ruling "Sheley's twelve year confinement in CM raises serious constitutional questions." However, the very next sentence that Petitioner ignores is "In addition to the mental and physical deterioration he alleges, Sheley's Eighth Amendment claim is supported, at this stage of the litigation, by his contention that his confinement in CM is punitive in nature. If the segregation is punitive, it should be determined whether it shocks the conscience, is grossly disproportionate to the offense, or is totally without penological justification." It should be noticed the ruling states "if the segregation is punitive," and then goes on to list other factors that must be considered before the confinement begins to rise to the level of a constitutional deprivation. As also in the citation of Williams v. Fountain, 77 F.3d 372 (C.A.11 (Ga.),1996); the case cited does not appear to state what Petitioner claims it states. Williams deals with a disciplinary confinement for a period of one year, where the Plaintiff had challenged due process. Unless Counsel for Defendant is grossly misreading the decision, nowhere in the body of the case does it appear to set a "high water mark" limiting solitary confinement to twelve months. The Court affirmed the lower court decision to grant summary judgment for the government. Petitioner begins discussion in section I by making the statement, "this case presents the fundamental issue as to whether de facto keeping an inmate incarcerated in solitary confinement for an extended indefinite period of time is cruel and unusual punishment and therefore violative of the Eighth Amendment as well as the Fourteenth Amendment." Yet, the cases Petitioner has cited do not address that position, nor do they show a conflict between circuits.

Quite opposite to what Petitioner attempts to argue, many circuits have addressed the issue of whether segregation, in and of itself, is a violation of the Eighth Amendment. In Jackson v. Meachum, et. al., 699 F.2d 578 (1983) the plaintiff was assaulted by many inmates, removed from the facility and then attempted to be returned to the same facility. This plaintiff refused to return for fear of more assaults. This plaintiff was

placed in a special housing unit which contained 2 kinds of patients, 1)the new arrivals who stay a few days for evaluation and 2) the remaining inhabitants who are suicidal, disruptive or violent, escape risks, or in protective custody. This plaintiff was placed here because he was determined to be suicidal but also for his own protection. The court ended up defining the issue as whether extended, indefinite segregated confinement in a facility that provides satisfactory shelter, clothing, food, exercise, sanitation, lighting, heat, bedding, medical attention, personal safety, but virtually no communication or interaction with fellow inmates, which confinement results in some degree of depression, constitutes cruel and unusual treatment violative of the Eighth and Fourteenth amendment, to the extent that prison authorities can be required to provide several hours daily interaction with other inmates. This court relied on Rhodes v. Chapman which makes clear that discomfort compelled by conditions of confinement, without more, does not violate the Eighth Amendment.

In Sweet v. South Carolina Dept. of Corrections, 529 F.2d 854 (4th Cir. 1975) the court stated, "isolation from companionship, restriction on intellectual stimulation and prolonged inactivity are inescapable accompaniments of segregated confinement, will not render segregated confinement unconstitutional absent other illegitimate deprivations. Nor will the fact that the segregated confinement is prolonged and indefinite be sufficient in itself to command constitutional protection, though it is a factor to be considered, especially if the confinement is punitive rather than administrative or protective." In Newman v. Alabama, 559 F.2d 283, 291 (5th Cir. 1977) the court stated "The mental, physical, and emotional status of individuals, whether in or out of custody, do deteriorate and there is no power on earth to prevent it..... If the State furnishes its prisoners with reasonably adequate food, clothing, shelter, sanitation, medical care, and personal safety, so as to avoid the imposition of cruel and unusual punishment, that ends its obligations under Amendment Eight. The Constitution does not require that prisoners, as individuals or as

a group, be provided with any and every amenity which some person may think is needed to avoid mental, physical, and emotional deterioration."

Bono v. Saxbe, 620 F.2d 609, 614 (7th Cir. 1980) stated "inactivity, lack of companionship and a low level of stimulation do not constitute cruel and unusual punishment even if they continue for an indefinite period of time, although the duration is a factor to be considered, especially if the confinement is punitive."

Clearly the many circuits have reached the conclusion that the extended stay in solitary confinement without other intrusions into basic human needs is not in and of itself a violation of any inmates Eighth Amendment right. It should also be noted that these courts were addressing these issues from the perspective of these inmates being in punitive segregation. Doe was not and has not ever been in punitive segregation, he has been in protective custody at his own request.

Therefore, Petitioner has not demonstrated a sufficient conflict between the rulings of the circuits to invoke Supreme Court scrutiny.

2.

Petitioner claims the decision of the Court of Appeals in sanctioning the Petitioner's indefinite solitary confinement for seventeen years as protection from imminent threat of death from other inmates conflicts with relevant decisions of this Court defining cruel and unusual punishment and due process. In his argument Petitioner states "the Court of Appeals in the June 7, 2000 opinion found on the unusual facts in the instant case that Farmer v Brennan, 511 U.S. 825 825 (1994) was controlling precedence that 'a prison official's deliberate indifference to a substantial risk of harm to an inmate violates the Eighth Amendment if the official knows that the inmate faces a substantial risk of harm and disregards that risk by failing to take reasonable measures to abate it.'" In his original complaint, Petitioner claimed Defendants ignored the threats

against him and exposed him to danger. However, there was no evidence to establish any defendant as acting with deliberate indifference to the risk of harm by the threats Plaintiff reported. Quite to the contrary, Defendants did such a good job of protecting Petitioner, he now complains of the protection afforded. Each and every time Petitioner was placed in protective custody it was at his request. It seems somewhat ironic for someone to ask for protection and then complain about the method of protection. Petitioner goes on to state "And the Courts decision held that under the facts of Doe's pleadings and affidavits that 'Doe established an Eighth Amendment violation under Farmer.'" (Counsel quotes it as A-10, when it is actually on page A-11 of Counsel's attachment.) And what Counsel fails to quote is the beginning of that sentence which says, "Taking everything he says as true, Doe established an Eighth Amendment violation under Farmer." This statement of the Court was not a finding on the merits, but a failure to state a claim review. Since Petitioner first claimed the Defendants refused to protect him from the threat of other inmates, the court evaluated the claim as if that statement were true. However, at trial the court found there was absolutely no credible evidence to support that claim. Throughout those pages in Petitioners brief he makes reference to numerous quotes from that Eleventh Circuit ruling. However, the quotes he cites were not a finding on the merits, but a failure to state a claim review. Therefore, they have no bearing after a case has been adjudicated on the merits as this case was. In the second paragraph of page 9 Petitioner appears to be quoting Sheley v. Dugger, 833 F.2d 1420 (C.A.11 (Fla.),1987) in his statement, "In *Sheley v Dugger*, supra, the Eleventh Circuit reaffirmed that twelve years of administrative solitary confinement would violate the Eighth Amendment recognizing the physical and mental deterioration of inmates facing prolonged confinement in maximum security and that the existence of feasible alternatives should have been implemented including transferring the inmate to a less dangerous prison where his identity could have been kept secret or releasing him on

parole." Counsel writes this as one sentence implying it was the finding of the Court in Sheley. However, this is a misrepresentation of the law. The Sheley ruling had nothing to do with "the existence of feasible alternatives should have been implemented including transferring the inmate to a less dangerous prison where his identity could have been kept secret or releasing him on parole." Sheley dealt with an inmate with an extensive history of escape risk being held in punitive segregation for twelve years and the question was whether the prison did not adequately satisfy due process in evaluating whether the inmate should stay in segregation, and the length of confinement. The closest Sheley comes to stating the points to which Counsel refers is the statement, "As with Sheley's other claims, however, we cannot decide the Eighth Amendment issue at this time. Because no evidence on the Eighth Amendment claim has been presented, we remand to the district court for an evidentiary hearing at which both sides may present evidence on the reasons for Sheley's segregation, the conditions in CM, the effects of long-term confinement in CM, the psychological evaluations (if any) that Sheley has received, and the possibility of feasible alternatives. *See Demps,* 805 F.2d at 1433; *see also Meriwether,* 821 F.2d at 417 (it was premature for the district court to dismiss the Eighth Amendment claims of an inmate facing prolonged confinement in segregation "without ascertaining the actual conditions of [the inmate's] confinement and the existence of any feasible alternatives"); *cf. Sweet,* 529 F.2d at 866 ("We accordingly feel constrained because of the extended period of time of plaintiff's confinement in maximum security to remand the case to the district court in order that it may take additional testimony and consider in greater detail whether the health of the plaintiff may be adversely affected by the restricted exercise rights accorded him.")." However, the Court followed that with the bold statement, "We express no views on the merits of any of Sheley's claims. We simply find that we cannot adequately address the claims without the benefit of more facts. The decision of the district court denying Sheley's petition for a writ

of habeas corpus is reversed and the case is remanded with instructions to hold an evidentiary hearing for the purpose of addressing Sheley's claims." Petitioner tends to suggest the ruling sets a precedence wherein it can be concluded that twelve years in administrative solitary confinement would violate the Eighth Amendment regardless of the reason for confinement or any other considerations. Respondents disagree with Petitioner's interpretation of this ruling.

3.

Petitioner claims qualified immunity does not protect prison officials from the obvious constitutional violations who under color of law have de facto kept the petitioner incarcerated in solitary confinement for seventeen years without transferring him to a prison where his life would not have been in imminent danger. However, Petitioner's claim quickly unravels when examined in the light of the true facts of this case (as argued in earlier sections). As Petitioner quotes from Hope v Pelzer, 536 U.S. 730, for a constitutional right to be clearly established for purposes of qualified immunity, its contours must be sufficiently clear that a reasonable official would understand that what he is doing violates that right; this is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful, but it is to say that in the light of pre-existing law the unlawfulness must be apparent. The right which this Petitioner claims, the right to be free from extended incarceration in protective custody (even when at the inmate's own request), is not a clearly established constitutional right. The argument is somewhat ridiculous in and of itself. To even begin this thought process the question must be asked, Is Doe in protective custody as a result of punishment or is he is there for protection? Doe has not been in protective custody for this length of time for punishment. He has been there for his own protection as well as the protection of any other inmate who may want to pick a fight with him.

In a hearing held May 16, 2001 Doe admits being in

PCPC voluntarily. He agreed he was in protective custody because he believed he needed it and thus requested it. When Doe was transferred back from VSP to GSP he again requested to be in protective custody.

At trial the judge said "As I understand the testimony before the Court today, you do not have to remain in protective custody if you wish to sign the necessary forms with the State of Georgia asking that you be removed from protective custody. Now, you say that you don't want to be in protective custody, but you're fearful of your life if you're removed from protective custody. That's a policy matter between you and the Federal Bureau of Prisons and the state prison system, not to be determined by this Court."

Before this argument is ensued it must be remembered an inmate has no inherent constitutional right to be housed in a particular institution. Meachum v. Fano, 427 U.S. 215, 226, 96 S. Ct. 2532, 49 L.Ed.2d 451 (1976) or to enjoy a particular security classification Beard v. Livesay 798 F.2d 874, 876 (6th Cir. 1986) Moody v. Daggett 429 U.S. 78, 97 S. Ct. 274, 50 L.Ed.2d 236 (1976) Olim v. Wakinekona, 461 U.S. 238, (1983). Thus the issue is not decided from the perspective of Petitioner having a right or choice in the matter of where he will be housed. It is a discussion from the perspective of whether he is being deprived of basic human needs by a defendant who is being deliberately indifferent towards Petitioner.

The Eighth Amendment prescribes punishment that shocks the conscience, offends society's evolving notions of decency or is grossly disproportionate to the offense. Hutto v. Finney, 437 U.S. 678, 98 S. Ct. 2565, 57 L.Ed. 2d 522 (1978) Conditions of confinement constitute cruel and unusual punishment in violation of the Eighth Amendment when they involve the "serious deprivation of basic human needs" and are "totally without penological justification." Rhodes v. Chapman, 452 U.S. 337, 346-47, 101 S. Ct. 2392 (1981). An inmate must show the conditions of confinement resulted in the deprivation of a basic human need or inflicted unnecessary pain and suffering, and that the defendants were deliberately

indifferent to that condition. Lamarca v. Turner, 995 F.2d 1526, 1535 (11th Cir. 1993). Prisoners challenging the conditions of their confinement under the eighth must show deliberate indifference by the responsible officials. Wilson v. Seiter, 111 S. Ct. 2321, (1991) After incarceration, only the unnecessary and wanton infliction of pain ... constitutes cruel and unusual punishment forbidden by the Eighth Amendment. To be cruel and unusual punishment, conduct that does not purport to be punishment at all must involve more than ordinary lack of due care for the prisoners interest or safety. Whitely v. Albers, 475 U.S. 312 (1986) Administrative segregation and Solitary confinement do not, in and of themselves, constitute cruel and unusual punishment. Hutto Id.. Because Petitioner has adequate food, clothing, sanitation and privileges the conditions of confinement do not on their face violate the Eighth Amendment.

A court must consider whether the conditions involve unnecessary and wanton infliction of pain when determining whether conditions of confinement amount to cruel and unusual punishment. Estelle v. Gamble, 429 U.S. 97, 104 (1976) Unnecessary and wanton inflictions of pain are those that are "totally without penological justification." Rhodes v. Chapman, 452 U.S. 337, 349 (1981) To determine whether a condition of confinement results in unnecessary and wanton infliction of pain two requirements must be satisfied: first, the deprivation must be sufficiently serious such that it results in the denial of "the minimal civilized measure of life's necessities," and second, the prison official's state of mind must be one of "deliberate indifference" to the inmate's health or safety. Farmer v. Brennan, 511 U.S. 825 (1994).

With respect to the deliberate indifference portion of cruel and unusual punishment analysis Petitioner argues there are alternatives to his confinement and thus his rights are being violated because he could be some where else that is more palatable to him. He has failed to demonstrate how his health or safety is at an excessive risk or how anyone has acted with Deliberate Indifference towards him. If anything, the

Respondents have complied with his every wish and kept him in protective custody because he feels his life is in danger. Petitioner has been afforded protective custody at his request, thus demonstrating that in maintaining custody of plaintiff, defendants have acted with due diligence rather than deliberate indifference.

Nothing so amorphous as "overall conditions" can rise to the level of cruel and unusual punishment when no specific deprivation of a single human need exists. Wilson v. Seiter, 501 U.S. 294, 305 (1991)

Petitioner does not argue his confinement is cruel and unusual because he is deprived of food, clothing, shelter, medical care or other basic human need. As Petitioner admits in his petition, "the District Court ruled adversely to the Plaintiff that the conditions of confinement (food, sanitary, etc) were adequate." He is totally relying on the fact he has been in protective custody for 17 years as the reason his confinement is cruel and unusual. Thus the real issue here is whether the protective custody is in and of itself a violation of Petitioner's eighth amendment right to be free from cruel and unusual punishment. Pursuant to the current rules as stated in Rhodes, Farmer and Hutto, Petitioner must show a deprivation of a basic human need and that the deprivation is motivated by an officials deliberate intent to harm this Petitioner. Petitioner has produced no facts to even suggest this, or even a set of facts from which it could be circumstantially concluded his right was violated.

For the sake of argument what if this Honorable Court were to hear Petitioners frivolous claims and decide to adopt Petitioner's position that incarceration in a non punitive segregation (such as protective custody) for extended periods of time was in and of itself a constitutional violation?

Reversing the Trial Court in this matter would be contrary to public interest. Granting Plaintiff's request and allowing his arguments to stand would be adverse to the public interests and create a windstorm of inmate requests for PCPC. If this is allowed, inmates will get to GSP (or any other prison

for that matter), request PCPC, get it, stay a while, then request a transfer to another state or into the federal system claiming PCPC is cruel and unusual punishment. If the inmate were transferred he would then get himself to PCPC status at the new prison, claim cruel and unusual punishment and again want to be transferred to a place more palatable to him. If this Plaintiff is allowed to pick and choose his place of confinement the entire prison system in this nation will have to be revamped, that is a monetary and ethical cost that no state can afford at this time. Not to mention the undermining of the security and control the public expects prison administrations to maintain.

What about the prisoner on death row, who through repeated appeals stretches out the length of time he is incarcerated in segregation? Does that mean his incarceration is cruel and unusual punishment? What about the large number of inmates, who through escapes and violent behavior within prison find themselves on extended segregation for many years? Does that make his incarceration, in and of itself, cruel and unusual punishment even after the prison has satisfied all concerns of due process and conditions of confinement? What about the law enforcement officer who is convicted of a crime and because of his past employment cannot be placed in general population? Do we declare his sentence void just because he may be subjected to extended periods of protective custody? What about the multitude of other inmates who for whatever reason choose to request protective custody status and stay there for extended periods of time? Do we open the door for them to file lawsuits for cruel and unusual punishment due to a condition they themselves chose? The answer to all of these questions is, Of Course Not. Likewise, John Doe does not have the clearly established constitutional right he petitions this Court to protect.

4.

Petitioner claims the indefinite long term solitary confinement of the petitioner violates the *United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* which was Ratified by the United States. However, for reasons already discussed in this brief, and due to the fact the claim was not raised in the Petitioner's original complaint, the claim is totally without merit and should not be considered by Petition for Writ of Certiorari.

Conclusion

Petitioner wants to make himself out to be some type of martyr because he has spent 17 years in protective custody. This criminal's interests balanced against the interest of the State, society and other inmates, especially taking into consideration he has never been harmed, is in good health, has no mental health history within the system, has food, shelter, medical care, law library, and recreation, is such that there has been no violation of any constitutional right what so ever. For these reasons Doe's Petition for Writ of Certiorari should be denied and the Appeals Courts ruling upheld.

Respectfully Submitted,

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